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A
R E F U T A T I O N

Of a Pamphlet, entitled,

The Answer of PHILIP FRANCIS, Esq. *K*

T O T H E

Charges exhibited against him, General CLAVERING, and
Colonel MONSON, by Sir ELIJAH IMPEY, Knt. *H*

When at the Bar of the House of Commons, on his Defence to the
Nundcomar Charge.

TO WHICH IS ADDED,

A FacSimile Copy of the Petition of NUNDCOMAR,

Burnt as a Libel by the Hands of the common Hangman,
in Consequence of a Motion of Mr. FRANCIS:

With the Proceedings relative to it in Council at
CALCUTTA.

L O N D O N :

PRINTED FOR JOHN STOCKDALE,
Opposite Burlington House, Piccadilly.

MDCCLXXXVIII.

REPUTATION

Of a Republic

The Answer of Paul Francis Hall

TO THE

Committee on the Judiciary of the United States Senate

Who have called on him to appear before them



A True and Correct Copy of the Report of the Committee on the Judiciary of the United States Senate

As it appears in the Committee's Report

to the Senate, in the Year 1891

With the Proceedings of the Senate

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LONDON:

PRINTED FOR JOHN W. BAKER

Opposite the Bank of England, London

1891

TO make *any* publication pending judicial proceedings, that may influence the minds of those who are to decide on them, or of the community at large, be it favourable or adverse to the party accused, is certainly censurable; but in an higher degree, when calculated to prejudice the person under accusation. It was hoped that a stop would have been put to such outrages on justice by the public prosecution ordered by the House of Commons, yet a pamphlet has since appeared of the same nature, calling itself a Speech of Mr. Francis, delivered on the 27th of February, 1788. From the solemnity of the introduction the public would be induced to believe it to be genuine, but it is well known that gentleman has disavowed it. Had he not, the futility of the reasoning, the falsehood of the assertions, and its not fulfilling the promise *of disclosing such scenes of iniquity, as would astonish and shock the House*, to which Mr. Francis had *most solemnly pledged himself*, gave it internal marks of spuriousness, which

B

proved

Francis
Speech

proved it had no right to boast of being his legitimate offspring ; but as the production, frivolous as it is, does not want malice, it is due to justice to detect its falsity for the purpose of obviating its effects.

It calls that part of Sir Elijah Impey's speech, which is supposed to have given offence, a Charge brought against General Clavering, Colonel Monson, and Mr. Francis ; and then proceeds to state what that charge was, laying the fault on Sir Elijah Impey in not having reduced his speech to writing, if it is not stated fairly. In one particular, it is not only stated unfairly, but falsely : he did not mention the secret minutes of the Council, which were in contradiction to their public acts, as being made *before and after* the execution of Nundcomar ; in fact, none existed *before*. The fair way of stating the case would have been, to have given the proceedings of the Council on the 14th and 16th of August, 1775, at large, together with the paper which was the subject of them ; and then the minutes which were asserted to be contradictory to the public acts being thus confronted with them, every reader might on inspection determine, whether such contradictions did exist, without attending to arguments necessarily perplexing, when the materials, on which they are grounded, are withheld. Here are those proceedings :

Extract

Extract of Bengal Secret Consultations, the 14th August, 1775.

“GENERAL CLAVERING—I beg leave to inform the Board, that, on the 4th of this month, a person came to my house, who called himself a servant of Nundcomar, who sent in an open paper to me; as I imagined that the paper might contain some request that I should take some steps to intercede for him, and being resolved not to make any application whatever in his favour, I left the paper on my table until the 6th, which was the day after his execution, when I ordered it to be translated by my interpreter. As it appears to me that this paper contains several circumstances which it may be proper for the Court of Directors, and his Majesty’s Ministers, to be acquainted with, I have brought it with me here, and desire that the Board will instruct me what I have to do with it: the title of, it is, “A Representation from Maha Rajah Nundcomar to the General and Gentlemen of Council.”

“Mr. Francis—As the General informs the Board, that the paper contains several circumstances which he thinks it may be proper for the Court of Directors, and his Majesty’s Ministers, to be acquainted with, I would request that he lay it before the Board.

“Mr. Barwell—I really do not understand the tendency of this question, or by what authority the General thinks he may keep back or bring before the Board a paper addressed to them, or how this
address

address came to be translated for the particular information of the General before it was presented here. If the General thinks himself authorized to suppress a paper addressed to the Gentlemen of Council, he is the only judge of that authority; for my part, I confess myself to be equally astonished at the mysterious air with which this paper is brought before us, and the manner in which it came to the General's possession, as likewise at the particular explanation of every part of it before it was brought to the Board. If the General has a particular commission to retain this paper from the knowledge of those to whom it is addressed, he alone is the proper judge how he ought to act; when the paper comes before me I shall judge of it.

“ General Clavering—If Mr. Barwell will be pleased to recur to the introduction of my minute, he will observe that I mentioned having put the paper into the hands of my Persian translator; consequently could not know the contents of it, or to whom it was addressed, till it was translated. I brought it with me to the Council the first day which they met, after I knew its contents; but the Board not having gone that day into the secret department, I did not think it proper at that time to introduce it. Nobody can be answerable for the papers they may receive. All that I can say is, that this paper had the seal and signature of Rajah Nundcomar to it; and I bring it to the Board just in the form I received it, that is to say, open.

“ Colonel Monfon—As this paper is said to contain

tain circumstances with which the Court of Directors, and his Majesty's Ministers, should be acquainted, I think the General should lay it before the Board.

“ The Governor General—I do not understand this mystery: If there can be a doubt whether the Paper be not already before the Board, by the terms of the General's first minute upon it, I do myself insist that it be produced, if it be only to give me an opportunity of knowing the contents of an address to the Superior Council of India, excluding the first member in the title of it, and conferring that title on General Clavering; and I give it as my opinion, that it ought to be produced.

“ General Clavering—I am sorry to observe, that the Governor General should have mistaken the title of this address to the Board, by calling it an address to me as Governor General, when the title of it had been so recently mentioned, by my saying it was addressed to the General and the Gentlemen of Council: which, in my opinion, does not express, either by words or by inference, that ever that title is such as the Governor General has mentioned. At all events, I am no more answerable for the title of the paper than I am for its contents,

“ The Governor General—I did not say that the address gave the General the title of Governor General, but meant only to imply that it conferred that title on him, by mentioning him particularly, and the rest of the Council collectively.

“ Resolved,

“Resolved, That the paper delivered by the servant of Nundcomar to General Clavering be produced and read.

“The General is accordingly requested to produce it, and it is read.

N. B. This paper is ordered to be expunged from the Records, by a resolution of the Board taken at the subsequent consultation on the sixteenth instant,

Extract of Bengal Secret Consultations, the 16th August, 1775.

“THE Persian translator sends in a corrected translation of the petition of the late Maha Rajah Nundcomar, delivered in by General Clavering, and entered in consultation the 14th instant; in which the Board remark, that the address is made in the usual form to the Governor General and Council, and not as was understood from the first translation of it laid before the Board.

“The Governor General moves, That, as this petition contains expressions reflecting upon the characters of the Chief Justice and Judges of the Supreme Court, a copy of it may be sent to them.

“Mr. Francis—I think that our sending a copy of the Rajah Nundcomar’s address to this Board to the Chief Justice and the Judges would be giving it much more weight than it deserves. I consider the insinuations contained in it against them, as wholly unsupported and of a libellous nature; and,
if

if I am not irregular in this place, I would move, that orders should be given to the Sheriff to cause the original to be burned publicly by the hands of the common hangman.

“ Mr. Barwell—I have no objections to the paper being burned by the hands of the common hangman; but I would deliver it to the Judges, agreeable to the Governor's proposition.

“ Colonel Monson—I differ with Mr. Barwell in opinion. I think this Board cannot communicate the letter to the Judges; if they did, I think they might be liable to a prosecution for a libel. The paper I deem to have a libellous tendency, and the assertions contained in it are unsupported. I agree with Mr. Francis in opinion, that the paper should be burned, under the inspection of the Sheriff, by the hands of the common hangman.

“ General Clavering—I totally disapprove of sending to the Judges the paper, agreeably to the Governor General's proposition, because I think it might make the Members of the Board who sent it liable to a prosecution; and therefore agree with Mr. Francis, that it should be delivered to the Sheriff, to be burned by the hands of the common hangman.

“ The Governor General—I should have no objection to any act which should publish to the world the sense which this Board entertain of the paper in question; but it does not appear to me that such an effect will be produced by Mr. Francis's motion. The inhabitants of this settlement form but a very small

small part of that collective body commonly understood by that expression of The World. The petition itself stands upon our records, through which it will find its way to the Court of Directors, to his Majesty's Ministers, and in all probability will become public to the whole people of Britain. I do not, however, object to the motion of its being burnt.

"The Board do not agree to the Governor General's motion for sending a copy of the address of Maha Rajah Nundcomar to the Judges; but Resolve, That orders be sent to the Sheriffs, with the original letter, to cause it to be burned publicly, by the hands of the common hangman, in a proper place for that purpose, on Monday next, declaring it to be a libel.

Mr. Francis—I beg leave to observe, that by the same channel through which the Court of Directors, and his Majesty's Ministers, or the nation, might be informed of the contents of the paper in question, they must also be informed of the reception it had met with, and the sentence passed upon it by this Board; I therefore hope, by its being destroyed in the manner proposed, will be sufficient to clear the characters of the Judges, so far as they appear to be attacked in that paper; and, to prevent any possibility of the imputations indirectly thrown on the Judges from extending beyond this Board, I move, That the entry of the address from Rajah Nundcomar, entered on our proceedings of Monday last, be expunged.

"Agreed, That it be expunged accordingly, and that the translations be destroyed."

Here

*Petition
strayed*

Here is a fac simile copy of the paper which had been the subject of those proceedings :

[The original translation is printed in the common type ; the words printed in Italics are inserted in the original, in the hand-writing of Mr. Hastings.]

To the Governor General and Council.

WITHIN these three soubahs of Bengal,

Orissa, and Bahar, ^{from} the manner in which I ^{have} lived

* Something
is wanting
here to com-
plete the
sense.

^{honor} and the ^{credit which I have possessed.} ~~character and reputation I enjoy.~~ * For-

^{all} merly, the Nazims of these soubahs ^{upon my good}

^{afforded attention and aid to my good name} ~~name bestowed some consideration and regard;~~ and

^{presence of the} from the king of Hindostan I ^{received a} ~~have a~~ munfib of

^{beginning} five thousand, and from the first of the company's

^{administration in consideration of} ~~government looking upon~~ my good wishes to the

^{had the direction of the affairs of} king, the gentlemen who ~~were in power here;~~ and

^{this place, and at this time the} the present governor, Mr. Hastings, who is at the

did hold and do hold me in
 head of affairs, ~~respected me, and do respect me~~

did occasion any loss to *or*
 I was never ~~disloyal to the state, nor committed~~

of *proceed from me.*
 any oppression ~~upon~~ the Ryots. For the fault of

at this time a true *just* *in a small degree*
 representing ~~some facts~~ which I ~~just made known~~

the redress relief
 for the interest of the king, and ~~welfare~~ of the

I in a small degree made known
 people, many English gentlemen have become my

enemies; and, having no other means to conceal

of the highest *my*
 their own actions, deeming ~~it highly politic~~ for

destruction of the utmost expediency *revived*
 themselves ~~to make an end of me.~~ An old affair

formerly been
 of Mohun Pursaud's ~~£~~ which has ~~repeatedly been~~

found to be
 declared false; and the governor, knowing Mohun

Pursaud to be a notorious liar, turned him out of

themselves
 his house; ~~they have now revived, and granting~~

becoming his aiders and abettors and
~~him their aid and assistance, and joining with~~

Lord

Lord Impey, and the other justices, have tried me by the English laws, which are contrary to the customs of this country, in which there was never any such administration of justice before; and taking the evidence of my enemies in proof of my crime, have condemned me to death. But, by my death, the king's justice will let the actions of no person remain concealed; and now that the hour of death approaches, I shall not, for the sake of this world, be regardless of the next, but represent the truth to the gentlemen of the council. The forgery of the bond, of which I am accused, never proceeded from me. Many principal people of this country, who were acquainted with my honesty, frequently requested of the judges to suspend my execution till the king's pleasure should be known, but this they refused, and unjustly take away my life. For God sake, gentlemen of the council, you who are just, and whose words are truth, let me not un-

dergo this injury, but wait the king's pleasure. If I am unjustly put to death, I will, with my family, demand justice in the next life. They put me to death out of enmity, and from partiality to the gentlemen who have betrayed their trust; and, in this case, the thread of life being cut, I, in my last moment, again request, that you, gentlemen, will write my case particularly to the just king of England. I suffer, but my innocence will certainly be made known to him.

These are copied from the evidence now before the House of Commons. The reasonings of Sir Elijah Impey on this subject are as follows :

“IT is not consistent with the high character which General Clavering has left behind him, that if he, in his conscience, thought there were circumstances in the case of Nundcomar, which ought to render him a proper object for mercy, he should have taken the resolution of not recommending him to mercy; much less that he should defeat the petition of the unhappy convict by retaining it until it could be of no possible use to him; and what makes

makes this observation stronger is, that the paper was no private address to him only, but was an address to the Board at large, whose sense he would not *suffer* to be taken on the propriety of recommending him to mercy.

“ And surely I do not go too far, when I assert, that, had the paper been produced to the Board before the execution of the criminal, both humanity and duty required, if the Council believed the facts alledged in that petition to be true, that they should have used all lawful, I had almost said, unlawful means, to procure a respite of his sentence, instead of throwing an additional load of infamy on the memory of that unhappy man, for making this last effort for his life, buoyed up, as it appears in evidence he had been, to expect his enlargement, from the influence of the General and Colonel Monson, even to the day before his execution, when he wrote this very petition, and sent it to the General to be delivered to the Council for that purpose.

“ Yet the General was at first inclined to think that this paper contained matter proper for the information of the Directors, and his Majesty's Ministers, for, on the 14th of August, he introduced it for that purpose; but, on reflection, and better information, like a man of honor, he retracted his opinion, and considered it as *a libel*.

“ Mr. Monson and Mr. Francis never thought it fit to be communicated to the Directors or the King's Ministers, and General Clavering joined with Mr. Monson in holding it of so dangerous a tendency, that he feared *even a communication of it to the judges*

Nunc

Petitⁿ

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judges might be deemed a criminal publication of it.

“ Mr. Francis thought it would be giving it more weight than it deserved, if it was sent to the judges, as be considered the insinuations contained in it against them as WHOLLY unsupported, and of a libellous nature. If that notoriety of the guilt of the judges existed then, or that conviction in consequence of it, which is laid in the first Article ; if that notoriety and that conviction extended to the majority of the Council, how was the paper unsupported then ? And if unsupported then, what new matter has arisen to support it now ? What makes that a just accusation now, which was libellous then ? The member who moved that it should be burnt by the common hangman, added that by the same channel which conveyed it to England, information would be given of the reception it met with, and the sentence passed upon it ; and concluded by HOPING, that its being destroyed in the manner proposed, will be sufficient to clear the characters of the judges, and to prevent the POSSIBILITY of the imputations, indirectly thrown on the judges, from extending BEYOND THAT BOARD.

“ That these were the real, and not ostensible reasons held out on public grounds, to support appearances, and to avoid flinging a stain on public justice, though they might privately think ill of the conduct of the judges, appears by these sentiments being declared in a secret department ; so that the resolution could not fix a public stain to be noted in Calcutta.

“ That the paper itself should survive, is hardly more

more providential for me, than that the gentleman who moved for the condemnation of it, and who expressed *his hopes* that it would prevent *any possibility* that the imputations indirectly thrown out against the judges *could extend beyond that Board*, is the surviving member of that majority.

“ From him, who, to prevent its extending beyond that Board, had with so much solicitude procured the paper to be expunged from the proceedings, I hope I may be thought to have some claim to expect that these imputations will not be encouraged in England; should, nevertheless, such imputations have been suggested by any member or members of the Council, (and, I am sorry to say, that their secret minutes shew that there have,) I am in the judgment of the House, whether it would not be a precedent of dangerous tendency to admit secret communications, and private informations in evidence, from any persons whomsoever, to disavow and contradict their own solemn, official, unanimous acts, entered on public records; on records required by act of parliament to be transmitted to his Majesty's Ministers, as authentic information, both of their acts and their reasons for their acts.

“ I neither assume, nor pretend to any right to enquire into the propriety of obliterating any matter from records of so high a nature, which has been thought of sufficient importance to be entered upon them; but as the arguments refuting this paper remain on those records, and matter of the same import with that paper has found its way beyond that Board, and has extended to England, and even got into the reports of your Committees, I may be indulged

dulged in complaining (without giving offence) of the effect of that tenderness to the characters of the judges, which would not permit that paper to remain on the proceedings. Had it remained, the Directors and his Majesty's Ministers would have seen what were the particular topics which had been censured, and been thereby enabled to judge of the candour and propriety of reviving and propagating, by secret minutes, the very same accusations which they had publicly condemned as a libel. Had it remained on the record, those representations could never have been made."

These are extracted from a very accurate note of his speech taken at the time.

The secret minutes complained of and asserted to be contradictory to those proceedings are dated 21 March and 24 April 1775, 15 September 1775, 21 November 1775, and 21 March 1776. Taking them as there set out, whether they are or are not contradictory to these proceedings, is the only question. These are the minutes as there set out :

Minute of Mr. FRANCIS.

April 24, 1775.

"I beg leave to observe, that a prosecution for a conspiracy is now instituted, or is intended to be instituted, against Maha Rajah Nundcomar, and others ; the tendency of which seems to me to be to prevent, or deter him from proceeding in making good those discoveries which he has laid before the
the

the Board; and I cannot but think that the East-India Company, and consequently this Board, have a very great concern in every step taken in that prosecution, whether it be actually begun, or intended."

Extract of a Minute of CLAVERING, MONSON, and FRANCIS.

Sept. 15, 1775.

"After the death of Nunducumar, the Governor, we believe, is well assured that no man, who regards his safety, will venture to stand forth as his accuser.

"On a subject of this delicate nature, it becomes us to leave every honest man to his own reflection. It ought to be made known, however, to the English nation, that the forgery, of which the Rajah was accused, must have been committed several years; that in the interim he had been protected and employed by Mr. Hastings; that his son was appointed to one of the first offices in the Nabob's household, with a salary of one lack of rupees; that the accusation, which ended in his destruction, was not produced till he came forward, and brought a specifick charge against the Governor-General, of corruption in his office."

Ditto, dated Nov. 21, 1775.

"It seems probable, such embezzlements may have been universally practised. In the present circumstance, it will be difficult, if not impracticable, to obtain direct proofs of the facts. The terror

D

impressed

impressed on the minds of the natives, by the execution of Maha Rajah Nunducomar, is not to be effaced ; for though he suffered for the crime of forgery, yet the natives conceive he was executed for having dared to prefer complaints against the Governor General.

“ This idea, however destitute of foundation, is prevalent amongst the natives, and will naturally deter them from making discoveries, which may be attended with the same fatal consequences to themselves.

“ Punishment is usually intended as an example, to prevent the commission of crimes ; in this instance, we fear, it has served to prevent the discovery of them.”

Ditto, March 21, 1776.

“ Some of the facts, with which he (Mr. Hastings) has been personally charged, have been proved. The presumptive evidence, in support of the rest, will, we apprehend, lose none of its force, by the precipitate removal of Maha Rajah Nunducomar.”

Extract of a Minute of Mr. FRANCIS.

March 21, 1775.

“ The Governor General, who had long expected the appearance of such a letter, and was apprised of the contents of it, made no objection, however, to its being received and read at the Board. When the man, who advances a specific charge, declares himself ready to come forward
and

and support it, and to hazard the consequences of failing in his proofs, it may still be presumed that the charge is false ; but it does not partake of the nature of a libel. A libeller advances charges, which he does not in the end, or is unable to make good :—when called upon to appear and produce his evidence, he shelters himself, sometimes in the obscurity, sometimes in the superiority of his situation, and leaves the accusation without an accuser, to operate as far as it can, in the opinions of men, against the honour and reputation of the party accused. Rajah Nundocomar is not an obscure person in the country, nor does he in this instance act the part of a libeller. He is himself of very high rank ; he publicly accuses the Governor General of misconduct in his office, and desires to be heard in person in support of his charge.”

It had been assumed as a ground of proof to establish the first charge against Sir Elijah Impey, that the majority of the Council in Bengal were of opinion, that the Judges had been guilty of notorious injustice in the case of Nundcomar: to prove that they were of a contrary opinion, and for that purpose *only*, the consultations and papers were introduced ; to that purpose *only* the reasonings are directed. Whether this be a *wanton* attack, or whether the case be such that an attack can be the *only* defence, they who have read the evidence produced in support of the first article, even without the aid of Sir Elijah Impey's speech, are enabled to determine.

Mr. Francis is made to say, in speaking of what is called *his* defence, "That defence and accusation in *that* particular case may be inseparable." It is precisely the very case with respect to this part of Sir Elijah Impey's defence: they are so intimately united, that the imputable matter, which is considered as the attack, cannot be suppressed, if the written documents of the Council are *simply read*; it arises solely and immediately from a comparison of the proceedings with the subsequent minutes, by necessary consequence, without the assistance of argument. If the imputation is to be kept back, the defence must be deserted. It is *not true* that it is so in the particular case of Mr. Francis: all he has to do is, to shew that the minutes do not contradict the proceedings. Having done that, his defence is complete without making any attack; and, unless he shews that, he fails; his illiberal invectives can furnish no argument to that point.

The ingenuity of the pamphleteer assists him to exonerate himself from the imputation, first, by an attempt to impeach the authenticity of the paper produced; 2dly, by reconciling the sentence passed on the paper as a libel with the minutes asserted to be in direct opposition to such an idea; and, 3dly, by disavowing that its being a libel was the true motive for the acts of the Council, and substituting reasons for them of a totally different nature. It will be
no

no difficult task to establish the authenticity of the paper from the evidence contained in the pamphlet, and much more easy to prove, that it is morally impossible that the substituted reasons have been truly assigned.

By the fac simile copy of the paper it will appear, that the parts corrected in the handwriting of Mr. Hastings are not so obliterated in the original as not to be legible, by which all possibility of suspicion that the sense is altered must be done away; yet the following captious observations could not be restrained: "Mr. Hastings even *altered* the translation of it in many parts with his own hand; who will say that a paper so *altered*, and so produced, deserves any credit?" In another place, "Of the authenticity you can have no proof." With all this apparent inclination he does not venture to deny the authenticity. It would have been authenticated on its production, had not the present situation of Mr. Hastings rendered it indelicate to have called him as a witness before the House; but had its authenticity been daringly denied, Mr. Hastings, who kept himself in readiness, would voluntarily have attended.

After this feeble attempt to invalidate it, Mr. Francis is made to speak thus: "The original paper, I have no doubt, contained
" in-

“ insinuations against the Judges.” No one who reads the proceedings could doubt that ; what they were is material to be known. The nature of his argument forces him to admit what they were : he is made to say, “ It “ charged the Judges with having murdered “ Nundcomar for accusing Mr. Hastings, or “ to that effect.”

If it was to that effect, whether the specific paper produced be authentic or not, is become immaterial ; for every consequence follows with equal force from the petition, which is admitted : but the authenticity of the identical paper is unwarily admitted in the surprize and confusion that the unexpected appearance of it occasioned. He says, “ I never had a “ doubt that all the translations of it were “ destroyed, till Sir Elijah Impey produced “ a copy of it at the bar of the house.” Sir Elijah Impey *did*, therefore, produce a *copy* of it.

The condemnation of the libel, in order to reconcile it with the minutes, is endeavoured to be accounted for, “ because it came with- “ out a responsible accuser, without a witness “ to support it, the fabrication of a man “ publicly executed for a crime, and conse- “ quently no longer capable of proving his “ allegation ; that being the case, it was “ what

“ what he called a libel, and nothing else :
 “ he called it so then, he calls it so still,
 “ though he was not then, nor is now con-
 “ vinced that the substance of it is untrue.”

No law book furnished this definition of a libel. Does that which is lawful and true become false and libellous by defect of proof? Can he who thinks, who knows it to be true, condemn it as a libel? If they did not think, if they did not know it to be true, the majority of the Council should not have adopted it in their minutes. The argument, that it cannot be supported now, if it could not be supported at the time of its being laid before the Council, is so forcibly put in the reasoning of Sir Elijah above cited, that no further observation on it is necessary.

But he gives another reason why he was justified in calling it a libel. “ It included *all*
 “ the Judges, concerning two of whom (Mr.
 “ Justice Hyde, and Sir Robert Chambers)
 “ they never had any suspicion of corrupt mo-
 “ tives, and concerning another of whom
 “ (Mr. Justice le Maitre) they had then no
 “ ground of suspicion, except his intimacy
 “ with Sir Elijah Impey, his acting on all oc-
 “ casions as his instrument, and the notorious
 “ violence of his deportment: they, therefore,
 “ treated it as a libel against a whole Court of
 “ Justice ought to be treated.”

It

It was then a libel, because it imputed guilt to all the Judges collectively, and did not distinguish them from Sir Elijah Impey, to whom alone the whole guilt was to be imputed. Every publication, therefore, which attributes the guilt to them collectively, and not to Sir Elijah Impey, *is a libel*. This is said to be “no new distinction by Mr. Francis, no after-thought, no *ex post facto* vindication.”

The question, as stated for Mr. Francis, is put thus : “The question is, whether by those declarations (the declarations at the time of condemning the paper), he contradict many others, in which he has charged the prosecution and execution of Nundcomar on Sir Elijah Impey, as a political measure of the most atrocious kind ?”

By this must be understood the many declarations in which he has charged this on Sir Elijah singly ; for it is admitted by him, that to make that charge on all the Judges collectively is a libel.

To support this position, several minutes are produced. This is said to be his (Mr. Francis's) defence against the charge, as it affects the Council collectively.

The minutes cited for this purpose are from
the

the secret consultations of these dates, March 21, 1775, April 24, 1775, September 15, 1775, November 21, 1775, March 21, 1776. Those of the 21st of March, 1775, and 24th of April, 1775, cast no imputation whatever on the Court or Sir Elijah Impey; they are, indeed, before any proceedings were commenced against Nundcomar: the other minutes are directed against the whole court, against the judges collectively; not one of them discriminates the conduct of Sir Elijah Impey from that of the other judges by the most distant allusion; not one of them has the least tendency to exculpate any of the judges. These, therefore, by the admission of Mr. Francis himself, are *libels*. The writing of those minutes is absolutely irreconcilable with the idea of condemning Nundcomar's petition as a libel, *because it included all the judges*, for the minutes themselves equally *include them all*: these must be libels, if that was, and *they* ought to be treated (to use Mr. Francis's words) "as a libel against a whole court of justice ought to be treated." It does not yet appear to be true from any thing that has been said or published, that Mr. Francis ever *did* charge Sir Elijah Impey singly; it at present, therefore, carries every suspicion of being what it is denied to be, "a new distinction, an after-thought, an *ex post facto* vindication."

Can Mr. Francis say, that before this paper was produced at the bar of the House of Commons, he had ever revealed the contents of it to his most confidential friends? Can he say, that he ever before made *this* defence? The manner in which the attention of the public has been called to this subject makes it now highly incumbent on him to produce *one* minute, *one declaration* at least, in which he has charged Sir Elijah Impey *singly*, as is asserted, with "this political measure of the most atrocious kind." It is the act of a friend to advise him to do it; his friends and the public expect it. He is in time yet to urge it against Sir Elijah Impey; no decision has yet past on the first article. He would not have asserted it, if he could not do it, and he will not shrink from it. Let him produce *one*.

It will be an extraordinary case, indeed, if one judge was able to execute so atrocious a measure, two of the other judges being admitted to be under no suspicion of corrupt motives, and the third only suspected from being intimate with the corrupt judge, from acting as his instrument on all occasions, and from the notorious violence of his temper.

The latter are bold assertions against a judge who is no more, and not to be expected from the mouth of him who professes to be
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so tender of the fame of his deceased friends, from the man who had claimed favor and indulgence to one of them, "as due to a person
 " of high character, to a person who is not
 " here, who is not only absent, but dead, and
 " who died in the service of his country."
 To this indulgence, and on the same account, Mr. Justice le Maitre was equally entitled with that gentleman, for whom it was claimed: this wanton and indecent attack might sure have been spared against a man answering to the same description. Mr. Justice le Maitre left behind him a widow, a son, daughters, relations and friends, who may feel as keenly for an injury done to his memory, though perhaps not with the same public ostentation, as Mr. Francis may for that of the persons with whom he has been connected. His living in a particular intimacy with Sir Elijah Impey has been positively and pointedly negatived before the Committee by one witness: his clerk was also before them, and might have been examined to the same point; he could have informed them with *whom* the *midnight social hours* of that gentleman were spent. What is meant by the dark innuendo, where it is said, "Of him we had *then* no other ground
 " of suspicion," is not explained; the friends of Mr. Justice le Maitre have a right to an explanation of it.

Mr. Justice le Maitre was so far from being the instrument of Sir Elijah Impey, that his opinions with regard to the jurisdiction of the Supreme Court differed materially from those of Sir Elijah: he was an honest and a warm man; he was not contented with opposing Sir Elijah Impey on the bench, which he thought his duty required, but protested against his conduct in a public letter. That he openly opposed Sir Elijah Impey in many instances, in which the East India Company and the Council were materially concerned, and that the opinion of Sir Elijah was in those cases prevalent by virtue of the casting voice given to him as the Chief Justice, (being aided by Sir Robert Chambers only,) must be within the knowledge of Mr. Francis: will he say, he did not know this to be the case, when a mandamus was applied for to restore Mr. Stewart to the office of Secretary to the Council, in the action brought by Cummaul O'Deen against the Calcutta Committee, and in the instance of the rule formed by the Court to support the right of the Company to detain prisoners on account of revenue? If he does remember those oppositions by Mr. Justice le Maitre, ought he to have been made to say that Mr. Justice le Maitre *acted on all occasions* as the instrument of Sir Elijah Impey.

But Mr. Francis's character is treated with
still

still greater freedom by this author, who makes him declare with the most complete sang froid, "That he did not hesitate to declare in the most explicit manner, that the *private motive* of his standing so forward as he did, for the destruction of the copy and translations of the petition, sent by Nundcomar previous to his execution to General Clavering, was not the public one assigned." Does he esteem it a trifling matter to put false reasons on a record, which the Parliament has required to be laid before the king's ministers, as official authentic intelligence of the acts of the Council, and the special reasons of those acts? After such an avowal, who is to distinguish on the public records of the Company, what are his true reasons, from those, which he may afterwards, "in the most solemn and explicit manner," "on his honor," and "on his oath," "not hesitate," when pressed, "to declare not his true reasons," "but that he was really actuated by some *private motive*?" What a door does this open against him? What *private motives of ambition and vengeance*, after such a declaration, had it been advanced by himself, might not those, who are not inclined to think well of him, assign for many public acts, of which he has himself, perhaps, given the true and honest reasons?

Let us now suppose the reasons assigned on
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the record to have been only ostensible; let them be expunged, and every memorial of them be destroyed; let the true operative motive be substituted in their place. "It was his fear for the safety of General Clavering, Colonel Monson and he observing that the judges had gone all lengths, that they had dipped their hands in blood for a political purpose, and that they might again proceed on the same principle." This was a reason totally incompatible with that assigned for condemning the paper as a libel: this was an unequivocal accusation of all the judges collectively, and of the whole Court, not of Sir Elijah Impey separately. The judges, not Sir Elijah Impey, had gone all lengths, for they, not Sir Elijah Impey only, had dipped their hands in blood for a political purpose, and the fear was, that they, not he only, might again proceed on the same principle, and commit another legal murder on the person of General Clavering. What is become of their want of suspicion of Sir Robert Chambers and Mr. Justice Hyde now? Was all this fear for the safety of General Clavering on account of Sir Elijah Impey alone? Mr. Justice le Maître was then suspected only from his intimacy with Sir Elijah Impey: was it thought, that he was so much an instrument of Sir Elijah, as to have aided him in inflicting a capital punishment on the General? And for what? For what was esteemed publishing of a libel.

"What

“ What he (General Clavering) had done was
 “ in truth a most rash and inconsiderate
 “ action, namely, the bringing the petition at
 “ all before the Board ; the man was dead and
 “ General Clavering made himself the *pub-*
 “ *lisber of the libel* ; he put himself in the
 “ power of his enemies, who infallibly would
 “ ruin him.” This, let it operate as it may,
 Mr. Francis declares, “ on his honor, and that
 “ he shall, if necessary, on his oath, was a
 “ strong concurrent motive with Colonel
 “ Monson and him for getting the paper de-
 “ stroyed.” In the same page it is said to be,
 not the concurrent, but “ the sole motive.”

Had this been the reason on record, would
 even the names of General Clavering and Co-
 lonel Monson, (so continually insisted on by
 Mr. Francis as props to his reputation,) added
 to his own name, have procured credit to it
 from one man in England, let him be ever so
 much addicted to party ? It was impossible
 that they should be ignorant, that the publi-
 cation of a libel, the supposed offence for which
 it was feared the judges would again go all
 lengths, and would again dip their hands in
 blood for a political purpose, could by no
 strained construction of any law be made a ca-
 pital offence. Did they fear, that the General
 might be committed “ to the common gaol
 of Calcutta, so miserable and so horrid a place,
 that

that the bare commitment to it was equal to death?" They must have known that in England it was a bailable offence. They knew the special protection which the charter gave them; "that the person or persons of the Governor General or any of the Council shall not, nor shall any of them respectively, be subject or liable to be arrested or imprisoned upon any action, suit, or proceeding in the said Court, except in cases of treason or felony; nor shall the said Court be competent to hear, try, or determine any indictment or information against the said Governor General or any of the said Council for the time being for any offence, not being treason or felony, which the said Governor General or any of the said Council shall or may be charged with having committed in Bengal, Bahar, and Orissa, any thing herein contained to the contrary notwithstanding." Was it expected to be believed that the majority of the Council, with the whole executive power in their hands, would be so tame and submissive to a Court of Justice, as to suffer the General to be punished in any manner enormous and outrageous? Could fears arising from the expectation of such impossible acts be assigned on the record as causes for condemning the paper and destroying the memorial of it? If such causes entered on record would not have gained credit, they surely do not come with greater authority from the oral testimony of Mr. Francis alone,
even

even with the addition of *his oath*, and of *his honor*, to sanctify them: no man's oath can be received in any Court of Justice to falsify a record, much less to falsify his own act recorded solemnly by himself. What would have been the indignation of the majority of the Council, if Sir Elijah Impey had attempted to falsify their reasons solemnly entered on record? Let us hear, what they themselves say on a similar occasion in a minute of the 15th September, 1775: "As to the dismissal of Mr. Playdell, we have *assigned* our reasons, and disclaim any *right* in Mr. Hastings to attribute our conduct to other motives." What *right* has Mr. Francis to *attribute their conduct to other motives than what they have assigned*; and to throw so gross an imputation on the memory of his deceased friends, as that of having recorded themselves *liars*? Can common sense endure that his testimony should be received to prove, that the panic operating on the minds of him and Colonel Monson had force sufficient to induce them to condemn a paper as a libel, which in their consciences they then thought true, and which Mr. Francis still thinks true, and to add a stigma to the memory of a man, whom they knew to be falsely condemned to death, because he had justly remonstrated against the iniquity of his sentence?

Was this a cause that could produce such
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effects? Was this a fear, *qui cadere potest in virum constantem*? The assigning of such a fear as a motive, had those gentlemen been alive, might have been the cause of more real danger to Mr. Francis, than the supposed publication of the libel could have been to the General. Would either of those gentlemen have borne, that such a defence should be set up for him with impunity? Would that brave man, whom Mr. Francis represents as dying in the service of his country, "not in an honorable but an odious service, not in the field of battle, where his gallant mind would have led him, but in an odious unprofitable contest," would he have suffered himself to be protected from such a danger in such a manner? Would the Colonel have borne to hear such a concurrent motive assigned to himself? Would he have thought it honorable to the General to have falsified the record for his protection against such a fictitious danger? If their fears were so predominant on the 16th of August as to produce these extravagant effects, how came they so far dissipated, that the same persons should, on the 15th of September following, adopt in their own name what through fear only they had condemned in the petition of the convict? If it was dangerous on the 16th of August, why was it less so on the 15th of September? Their fears in August were, that they were betrayed by a member of their Council

Council to Sir Elijah; had that suspicion ceased in September?

An argument is attempted to prove that the minutes and the reasonings on the proceedings are not contradictory, because it would be an act of folly, if they were so, to enter them on the same record. The pamphlet says, "At first sight it is not very likely, that they, or any men, not absolutely idiots, should enter such contradictions on the same record, and place themselves in a point of view before the Directors, which must utterly annihilate their confidence in them."

Had it been true that the entries on the record were such as to *shew* the contradictions, the absurdity of so doing would not have rendered them less contradictory; but, in fact, there was no time when they *had* entered that on the record which made any contradiction.

Before the condemnation of the paper, there had been no imputation cast on the Court by any minutes of the Council; the paper, therefore, itself, and the reasons for condemning it and exculpating the judges, when entered on the record, encountered nothing that was contradictory to them. At the time when the minutes, which revive the charges in the condemned paper, were entered, the paper itself,

and all the translations, were destroyed, and the reasons thereby rendered unintelligible; there were still no contradictions entered on the record; it was not till Sir Elijah Impey, by restoring the paper to its place, had shewn that the subject matter condemned was *the very same matter which had been insisted on in the subsequent minutes*, that the contradictions made their *first* appearance.

On the proceedings transmitted to the India House, and in the printed abstracts from them, no contradiction appears at the present time; the Council were not in the state of idiocy supposed in the pamphlet. Had the paper all along stood on the record, had it been published in those abstracts, so that the King's Ministers and the public could have compared what had been condemned with what was subsequently insinuated, the observation made for Mr. Francis would have been true, but whether to the full extent of the sentence passed on the majority of the Council by the pamphlet, viz. "that they would be placed before the Directors in that point of view which must have utterly annihilated their confidence in them," is not for an individual to determine: but should that be the true point of view, the consequences would be of greater extent; for the same cause, which goes to the annihilation of the confidence of the Directors, extends

tends to the annihilation of the confidence of the King's Ministers, and of every man of common honor and probity throughout the whole nation.

Either the reasons which were entered at the time must be true, and the contradictions consequently admitted, or some reason not repugnant to common sense, and at the same time consistent with the minutes, must be assigned for entering them, expunging the paper, and destroying all the translations: if no other is assigned, let *this* stand till a better is produced, to which only it ought to give way; let it be supposed, till some better reason makes its appearance, that it was in the contemplation of the gentlemen at some future time, to advance the very same ideas which they had condemned in the paper, not as a charge which they knew they could not support, but as insinuations, which, being sent secretly, they knew could not be refuted: it certainly then became an act of prudence, which would suggest itself to a man of much less quickness of parts than Mr. Francis, to destroy every memorial of the paper, that it might not rise in judgment against them, and condemn them to that point of view in which it has been truly said none but idiots would place themselves. Though the pamphlet deserves not the least credit in any other part, yet the fullest assent must

must be given to it where it makes this declaration in the name of Mr. Francis, "That he never had a doubt but all the translations of it were destroyed, until Sir Elijah Impey produced a copy of it at the bar of the House." He certainly, notwithstanding his suspicions of being betrayed, had no doubt but all the translations were destroyed; it was in full confidence that they were, that he ventured to enter the minutes in the record: had the paper remained, those minutes would never have existed: he was not apprehensive of being placed "in that point of view" which the prudent measure of expunging the paper, and destroying the translations, if completely executed, would have removed to an infinite distance.

But it may be naturally asked, Why those reasons were at all put on the consultations? To which the answer is not difficult: it was, perhaps, nearly as disagreeable to Mr. Francis to be compelled "to bear testimony to the good conduct, or to make declarations in favor of Sir Elijah Impey," as "to be compelled to answer" for so doing; but it was not optional. "What General Clavering did was in truth a most rash and inconsiderate action, namely, the bringing the petition at all before the Board." Whether it was the duty of the General to bring before the Board a petition directed formally, as this was, to the Board, this is not the

the place to discuss. Had it at any rate been suppressed, those declarations in favor of the judges would have been avoided; as it was brought before the Board, it must be disposed of: this compelled him to speak the truth; for in opposition to the knowledge and sense of all the communities which compose the people of Calcutta, publickly and unanimously declared, they could not, as was first proposed by General Clavering, adopt the charges contained in the paper and transmit them as matter fit for the information of the Directors and his Majesty's Ministers: had they done an act of such notorious injustice, they must have subjected themselves to execration on the spot, and refutation from the concurrent testimony of the whole settlement, where the iniquity of the action would have been known to be outrageous.

The Council in the end did what justice required; they treated it as a libel, and entered true reasons for their so treating it as well as for expunging it and destroying all memorials of it. If the question be put, Why did they afterwards enter minutes in the same record contradictory to those reasons? In the answer which is attempted, that most difficult of all tasks has been boldly undertaken, namely, the reconciliation of absolute contradictions. This, as all such undertakings must do, has failed in
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the execution. From the ability of him, who chose such ground, it is fair to conclude that no better could be taken.

It might be asked, What was the real cause for such anxiety that the contents of the paper should not be known? Why, when it was burnt by the hands of the common hangman, it should be sealed up? The effect of the execution of the sentence was thereby destroyed; the publick neither knew who was the author against whom it was a libel, or why it was censurable. Many other questions might be asked not easy to be fairly resolved. If, as they wrote on the 15th of September, 1775, there was such criminal matter as ought to be made known to the English nation, was it proper that it should be made known by the inquisitorial channel of a secret minute? Why was it not made known by open, bold accusation? Why was it put in the form of insinuation, and not of a direct charge.

Why were the Judges to be arraigned and condemned by the public in England, when they were absent and ignorant that any charge was preferred against them? Did they wish them to be condemned unheard? Did they fear that giving them an opportunity to make their defence, would render it certain that they would prove their innocence? But though
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his assertions are not sufficient to reconcile contradictions, the author will reconcile them from the evidence brought by Sir Elijah Impey himself; for "it shall be proved beyond a doubt, that he himself never had, before his defence at the bar of the House, put that construction on the act of burning the petition, which he has lately endeavoured to fix upon it." This evidence is a letter written to the Secretary of State in January, 1776, complaining of the minutes of the majority in Council: he does not make this act of the Council part of his defence; and his not doing so "warrants a conclusion the most irresistible, that he had not the most distant idea, that their act on which he now insists could bear the construction which he now puts upon it."

Was he then in possession of the paper? He had it not till long after the transaction itself, for it appears that he applied for it to the Council on the 28th of August; the letter of the Council refusing it was of the 11th of September: when Mr. Hastings delivered it, is uncertain. As there can be no doubt that it would have been material to mention it in that letter, it would be natural to conclude from his omitting it, that Sir Elijah was then ignorant of its contents, unless he had sagacity enough to foresee that a still better use might be made of it by waiting till those, who then

dealt in insinuations only, might become bold enough to convert them into a publick charge.

But granting the argument in its fullest extent, admitting that Sir Elijah was in possession of the paper, and did not think the proceedings would bear that construction which he now puts upon them at the bar; admit it to have occurred then to him for the first time. Here is the paper, here are the proceedings; do they or do they not warrant the construction now put upon them? Can any other be put on them? It is said, "that was his time, if ever, to avail himself of their evidence against themselves." By having slipt that opportunity, he cannot have injured a defence founded on immutable reason. If the reasoning was true then, it is true now, and must for ever remain so. Neither the dulness, folly, or remissness of Sir Elijah can ever make it otherwise. It cannot be argued that Mr. Francis did not condemn the paper as a libel, that he did not propose the expunging it and the destroying of all the translations of it, that he did not profess to hope it would not prejudice the judges, and that it would not find its way beyond the limits of the Board; it cannot be argued, that, after all this, he did not join in the minutes; all these facts cannot be denied, because Sir Elijah Impey wrote the letter of the 20th January, 1776, without mentioning them. These facts must

must remain, and by them the construction is warranted.

There is one assertion of a serious nature, indeed, if it has truth and sound reasoning for its foundation. It is asserted that the paper "must have been obtained by means the most unjustifiable:" "by means which prove that they (the Council) were betrayed to Sir Elijah Impey by one of the members of their Board," "which prove to demonstration a collusion and confederacy between him and Mr. Hastings from the beginning." This is "conceived to be convincing to every candid man."

Before the communication of this paper is admitted to be damning proof, let us see what was communicated, and what was the occasion of the communication. The majority of the Council had, by gross insinuation on their secret minutes, accused both Mr. Hastings and the judges of a combination to take away the life of his accuser, and thus to defeat accusations which had been brought against him. If Mr. Hastings had not been joined in the same charge, ought he, as a man of honor, to have refrained from informing Sir Elijah and the judges of that unjust attack? Which was the dishonorable part of the business, the making these insinuations, as far as they respected the judges, matter of

their secret consultations, and by that means transmitting them to England, or the communicating them to the judges for the purpose of their repelling the injury? Mr. Hastings being in possession of this paper, which was a complete refutation by the Council themselves of the insinuations by them thus dispatched to Europe, would Mr. Hastings have done more than common justice by putting it into the hands of one of the judges? But Mr. Hastings himself was personally interested in the vindication of the judges. He was charged as a confederate with them; he was become a joint defendant; it was necessary to him that the defence should be joint; they could not be guilty without his being involved in the same crime; the act which enabled the judges to defend themselves, was, as done by Mr. Hastings, in the nature of self-defence—That was the cause of the communication of the paper; and the paper itself was put into Sir Elijah Impey's hands, as much for the purpose of defending himself, as for the defence of Sir Elijah and the other judges.—The Council were *betrayed* to Sir Elijah Impey, because Mr. Hastings put it in the power of the judges to defeat their secret attack, because he did not confederate and conspire with those who accused, to disarm the judges from making a defence as necessary to his own safety and honor,

nor, as it was to that of the judges. This was the criminal intercourse; this was the instance in which they suspected themselves to be betrayed. This intercourse, this communication, did not exist till these minutes made it necessary for the mutual defence of all the parties who had been calumniated; no such communication was ever carried on but on that occasion: no such had been at the time the paper was condemned; it is an *ex post facto* vindication that suggests it.

The point of honor, on this subject, is carried for Mr. Francis to a most extravagant pitch; these are the words that are given him in speaking of the communication of the paper: "Even if there had been no oath, Mr. Hastings was bound by his own agreement; in my breast I hold *such an agreement* to be equally binding as an oath." If there had been such agreement, was it not virtually, was it not completely cancelled, when the very matter which was condemned in the paper, had been made matter of accusation against Mr. Hastings. Had not the majority of the Council equally agreed that the paper should be considered as a libel? Had not Mr. Francis (who first denominated it so more specifically) agreed to esteem it so? Was not he, who had been the first mover in destroying all mem-
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rials of it, more particularly bound in honor, if not by his oath, after he thought all memorials actually destroyed, not to have set up that matter, which he had agreed with the Council to consider as false and libellous, as a true accusation against Mr. Hastings? Who was guilty of the first breach of faith, if Mr. Hastings can be supposed to have been ever bound by an agreement? Was it binding on one side and not on the other? Could any point of honor oblige him to submit to the consequence of so foul an accusation, without making use of the means of defence which were in his own hands? It would have been a most refined stroke of policy to have cajoled Mr. Hastings into such an agreement, and such a construction of the point of honor.

With regard to the refusal to apply to the judges for a respite, it is only necessary to observe, that all the applications of the Council which met with any opposition from the Court, were acts of direct interference with the province of the judges, and pending the proceedings before the trial.

They could not possibly be considered as reasons for not laying such a case before the judges as they might think reasonable cause to respite the sentence. The Court appears very properly to have resisted the receiving
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letters and messages concerning matters in suit before the Court ; it did not therefore follow, that applications, private or public, might not be made to the judges, collectively or individually, for the purpose of a recommendation to mercy. The pamphleteer has been guilty of a most gross misrepresentation, by applying an answer of the Court to a subject different from that to which it was given :

“ On the 27th of June we sent to the Judges an application from the Nabob of Bengal, in favour of Nundcomar ; to which the following is the answer of the Judges sent by message, June 25, 1775.

“ That the Court is of opinion, that all claims of individuals ought to be made directly to the Court by the individuals, and not by the authority of the Governor General and Council.

“ That it is contrary to the principles of the English constitution, for any person or persons to address a Court of Justice by letters missive, concerning any matter pending before such Court, and that the higher the station of the person or persons so addressing, the act is the more unconstitutional.”

That answer was not given, as is stated in the pamphlet, to any application made in favor of Nundcomar ; it was a frivolous claim to the right of an ambassador, to which Lord Ashburton, as appeared by Sir Elijah Impey's defence,

defence, properly blames the judges for having paid too much attention.

No application was made in favor of Nund-comar by the Council after his conviction—the former applications were never assigned as reasons for not making them by any of the Council.

Had a wanton attack been made on the memory of General Clavering and Colonel Monson, it would have been mean, illiberal, and unmanly; but Sir Elijah Impey was under no such personal obligations to those gentlemen, that he should give up a material part of his defence to an accusation, which might affect his fortune, fame, and liberty while living, as well as his memory, and the happiness of his posterity after his death, lest the consequence of that defence might not be to the honor of their memory. The foppery of gallantry in that part of the pamphlet which treats of the ladies' conduct to the prisoner, would be ill adopted by a judge pleading for every thing that is dear. No reflection was flung out against the ladies: if their conduct was improper, it is not to be ascribed to them, but to those who used or suffered their names to be used for the purposes of faction. The probability is, that the ladies were strangers to the messages sent in their names. Had General Clavering been, as
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the pamphleteer says he was, "particularly fearful of the imputation of supporting or encouraging the accuser of Mr. Hastings," he would himself have refrained from the visit which he made to Nundcomar whilst under accusation, and would not have permitted his secretaries and aid-de-camps to attend him in gaol.

No man has a right to call Sir Elijah Impey's veracity in question, because a member of the House of Commons has thought fit to prefer articles against him. Before such an accusation, surely, some ground should have been laid for it. Such an attack was separable from the defence set up. Had Sir Elijah given public reasons for a proceeding on record, which he afterwards disavowed to be his true reasons, and had attributed his conduct to any other private motive, he would have no right to complain that the truth of any of his assertions should be publicly denied: till that or some other just cause of suspicion be ascertained, he will do right to treat the attack and the attacker with the silent scorn they merit.

Mr. Francis is supposed to have professed a neutrality during the prosecution of Sir Elijah Impey. That he has professed this, is not doubted; but that he has not kept it, has been visible to those who have attended to his behaviour while it has been proceeding.

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Sir Elijah may possibly have no reason to wish that he had preserved his neutrality. He is most probably under no apprehensions of him as an informer, for his fund of intelligence must have been long ago exhausted. The zeal and activity of a professed enemy satiating his vengeance as a prosecutor, ever acts on a generous people in favour of the party prosecuted. This Mr. Francis has already experienced. In neither of these characters can he be dreaded.

Mr. Francis, who must be acquainted with the temper of his own heart, has more than once declared, that, on account of his disposition to Sir Elijah Impey, "he never would sit in judgment on him, nor ever give a judicial vote in any cause in which Sir Elijah might be a party, unless he could safely give it for him." Passions do not argue logically or make metaphysical distinctions; they do not distinguish accurately the cases that are favourable or unfavourable to those against whom they have been excited. After that declaration, notwithstanding the qualification annexed to it, he is most certainly to be dreaded by Sir Elijah Impey, should he ever become his judge. There is another character, in which he may, for the same reason, be feared, that of a witness. If neither of these characters be assumed, his friendship or enmity must be matter of indifference.

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It is not Sir Elijah Impey who has marked him as an enemy; he has by his public declarations marked himself as the enemy of Sir Elijah, who only gives credit to those declarations, in asserting that he is so. From the picture of his own heart, delineated by the pencil of Mr. Francis himself, when he made them, Sir Elijah Impey's must be deformed indeed, if it does not appear to advantage, when placed, as Mr. Francis desires it should be, in opposition to his. Let Mr. Francis really desist from assuming the character of a judge, or a witness, and there is no reason that Sir Elijah Impey should not treat his "eternal hostility" with everlasting contempt.

P O S T S C R I P T.

SHOULD Mr. Francis assume the character of a witness, whether he be a *volunteer* or no must be left to the feelings of mankind: his situation with the prosecutor can leave no doubt, that if he be disinclined to be examined, he will not be called: should he *in any circumstances* go beyond what he calls his *defence*, as far as *they* extend at least, he *must* be a volunteer. It may be predicted, without extraordinary foresight, that, in the case of his becoming a witness, he will not strictly adhere to that qualification which he has annexed to the case of his becoming a judge, or giving a judicial vote in any cause respecting Sir Elijah Impey, viz. "except he can safely do it in his favor." The person

son who gives testimony, which he professes to be in the nature of a defence, ought to be sure that he cannot be prejudiced by self-interest or enmity. Putting what he calls his defence into writing, and challenging Sir Elijah to do the same with the charge, may appear magnanimous; but it is, in fact, merely a flimsy art to captivate the public and ensnare Sir Elijah. Sir Elijah Impey has made no charge against him; he mentions acts done by Mr. Francis only to justify himself: there is no charge against Mr. Francis but what *he* pleases so to interpret; he stands *self-accused*. There are articles formally exhibited against Sir Elijah. In what cause, before whom, and to inflict what punishment can that which Mr. Francis writes be tortured into evidence against *himself*?

May it not be his object to procure something under the hand of Sir Elijah, which by glosses and constructions may be turned against him? Why else that anxiety to get his defence delivered in at the bar of the House? Why those observations to prejudice him for not doing it? Why should that which was done by the desire of Mr. Hastings, be used as a compulsory precedent for the conduct of Sir Elijah? He was heard by *himself*; he might have been heard by his counsel: was it ever thought just, that instructions given to counsel should be called for, to be used as evidence against the party defended? If they were called for, could any strictures be with justice made to the prejudice of his client for not delivering them? What difference is there whether the materials were in the hands of Sir Elijah or his counsel? The *evidence* he was ready to produce.

F I N I S.

